

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4583 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

HAMJA USMANBHAI SHEIKH

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMZI for Petitioner
RULE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/11/1999

ORAL JUDGEMENT

On 19.2.99 an order came to be passed by the Commissioner of Police, Ahmedabad City, Ahmedabad against the petition in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (PASA for short). A representation was made by the petitioner to the Commissioner of Police as well as the Chief Minister of Gujarat on 20.5.99 and 29.5.99 respectively. Having failed there, the petitioner has approached this Court.

2. The Detaining Authority in the grounds of detention stated that the petitioner is involved in theft cases of auto-rickshaws and as many as 6 offences are

registered against him. The Authority also considered statements of witnesses and recorded subjective satisfaction to the effect that the conduct of the petitioner has resulted into disruption of public order. The witnesses have expressed fear and the Detaining Authority was satisfied that the fear expressed by the witnesses is genuine and correct. The Detaining Authority therefore came to a conclusion that detention was the only remedy which can be resorted to to prevent the petitioner from pursuing his illegal and anti-social activities. The Authority considered that the accused is ordered to be released on bail in some of the cases and is likely to be released on bail in rest of the cases and if that is done, than the petitioner may pursue his activities after being released on bail and therefore the Authority came to a conclusion that the petitioner was required to be detained under the PASA Act. The petitioner has challenged the order of detention on various counts by preferring this petition under Article 226 of the Constitution of India. The main ground that is taken by the petitioner and is relied upon by the Learned Advocate for the petitioner is that the Detaining Authority has not taken into consideration the aspect of cancellation of bail while considering the possibility of less drastic remedy.

3. Mr.Joshi, Ld. AGP appearing for the State has opposed this petition. He submitted that the Detaining Authority has considered all the relevant aspects and was subjectively satisfied in detaining the petitioner. He submitted that the petitioner was not on bail throughout but was released only in some of the cases and therefore the question of cancellation of bail was not material.

4. Considering the rival side contentions it is an admitted position that out of 6 cases, in some of the cases, the petitioner was released on bail and in some of the cases, he was likely to be released on bail. The Detaining Authority therefore ought to have considered the question of cancellation of bail as a less drastic remedy in respect of cases where he was released on bail. The Authority also, ought to have considered the possibility of resorting of remedy of opposing bail application in rest of the cases. The Authority has considered neither of the two which reflects a clear case of non-application of mind. In view of the decision of a Division Bench dated 16th September, 1999 in LPA 1056 of 1999 in SCA 8650 of 1997 in the case of Yunusbhai Husanbhai Ghanchi Vs. District Magistrate, this is a clear case of non-application of mind which would vitiate

the detention order.

5. The petition therefore deserves to be allowed and the same is allowed accordingly. The order in question, passed by Commissioner of Police, Ahmedabad City, Ahmedabad dated 19.2.99 is hereby quashed and set aside. The petitioner Hamja Usmabhai Sheikh be set at liberty forthwith, if not required in any other case. Rule made absolute accordingly. No Costs.

(A.L.Dave, J)

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